Counsel for the respondent stated that he had drawn attention to this point at the hearing but that the Commissioner had brushed it aside. There is no mention of this in the notes of the hearing. Wherever a point of this kind is taken by counsel, the presiding officer ought to make at least a brief note of the point and of his ruling. Whether counsel took the point in this case or not, the Commissioner himself should have taken care that the employer was correctly cited.

The Memorandum of Appeal is headed: — "Assistant Commissioner of Labour, on behalf of Appathurai . . . Appellant and . . . The Manager (of the Company) . . . Respondent" . . . and signed: — "ABC, Federal Counsel, Federation of Malaya, Solicitor for Appellant."

Procedure under the Workmen's Compensation Ordinance is made as simple as possible but this must not obscure the fact that in the case of an adult it is the workman himself who is the applicant. He is the *dominus litis* and the proceedings must be in his name. The labour officer may be authorised to sign a document on his behalf but that does not make the labour officer the litigant. His position is generally similar to that of a solicitor; he has no authority of his own; the authority is that of the workman who can withdraw it at any time and continue in person or instruct a solicitor if he so desires.

The appearance of a federal counsel is open to objection on two grounds. The whole question in these proceedings is a question of money between the employer and the workman; it is a question between subject and subject and it is inconsistent with modern constitutional practice for a government advocate to appear in such a matter unless the Treasury are in some way concerned. That, in my view, is a major objection. There is also the technical objection that, if he were deemed to be acting for the workman, this Federal Counsel has never been admitted as an advocate and solicitor. However, in order to avoid delay and expense, I permitted counsel to address the court on the merits, as *amicus curiae*.

The facts of the case are these. The workman sustained permanent injury to his left arm by an accident in the course of his employment. The surgeon estimated the permanent partial disability at 15 per cent. Liability was admitted but the workman claimed that his disability amounted to 50 per cent. The sole question was the extent of the disability. It must always be remembered that although the workman is assisted in various ways he is, nevertheless, in substance a plaintiff and the onus is on him (or his advisers) to prove all the necessary facts. There was no evidence whatever on which the Commissioner could have found that the disability of this workman exceeded 15 per cent.

Counsel for the employer took the point that appeal from the award of a Commissioner does not lie unless some substantial question of law is involved in the appeal. The three grounds of appeal set out in the memorandum raise no point of law. The appeal was therefore incompetent and was dismissed with costs on that ground but subject to amendment of the proceedings by making the company the respondent.

Appeal dismissed.

MOHAMED ABDULLAH v. TEOH TENG SWEE.

[O. C. J. (Thomson, J.) May 15, 1951]

[Ipoh — Civil Suit No. 386 of 1950]

AND

TEOH TENG SWEE v. CHENG KOK YAU & ANOR.

[O. C. J. (Thomson, J.) July 13, 1953]

[Ipoh — Civil Suit No. 501 of 1951]

Land laws — Principal and agent — Attorney not empowered to sell — Payment of gift to "Imperial Nipponese Government" — Sale of land by attorney during Japanese occupation — Validation of transaction by special order No. 1 of 2602 — Subsequent sale by purchaser before registration of his title — Mutual mistake — Frustration — Debtor & Creditor (Occupation Period) Ordinance, 1948 — Debt or obligation incurred during occupation period — Compensation — Basis of valuation — Knowledge of lack of authority — Effect of s. 16D of Titles to Land (Occupation Period) Ordinance, 1949.

C.K.C., attorney of C.K.Y. resident at Hong Kong during occupation period, under a limited power of attorney, which did not authorise sale of lands, purported to sell his principal's land by a memorandum of transfer dated 7th June, 1942 to T.T.S. for the purpose of raising money to pay contribution called "Gift to the Imperial Nipponese Government". The transfer was executed by C.K.C. and accepted by T.T.S. in the well-founded belief that the proposed legislation by occupying power, which in fact was promulgated as special order No. 1 of 2602 (1942) on 27.7.42, would validate such a transaction.

Pending registration of transfer T.T.S., describing himself as "registered proprietor" of the land, executed a subsequent transfer thereof to M.A. on 5.6.1943. Both transfers, which were pending registration at the time of Japanese surrender, were rejected by the Registrar of Titles on 1.3.1950 on the grounds that, as to the first transfer, C.K.C. had no authority and, as to the second transfer, T.T.S. not being the registered proprietor could not convey.

In an action by M.A. against T.T.S. (neither C.K.Y. nor C.K.C. being parties thereto) for recovery of purchase money. —

Held: (1) at the time second transfer was executed both parties were under the mistaken belief that T.T.S. was the registered proprietor; (2) the second transfer was, therefore, void ab initio; (3) M.A. was entitled by reason of frustration of contract, to refund of purchase money as money had and received; (4) such a

claim was a debt or obligation quasi ex-contractu which arose at the time T.T.S. received the money and as such it was an occupation debt liable to revaluation under the Debtor and Creditor (Occupation Period) Ordinance 1948; (5) no demand having been made during occupation period such debt fell to be revalued as on 12th August 1945 under section 6 and the debt when so revalued being less than $100 nothing was recoverable and the action was dismissed with costs.

T.T.S. thereafter brought an action for compensation or damages against C.K.Y. and C.K.C.

Held: (1) T.T.S. well knew of C.K.C's. lack of authority; (2) the original transaction was entered into on the well-founded belief that the first transfer would be validated by legislation by the occupying power and which, in fact, was validated by special order No. 1 of 2602 on 27.7.42; (3) the implied undertaking by C.K.C. to do everything in his power to effect a valid transfer was fulfilled by operation of law and there was no impediment during occupation period to the registration of this transfer; (4) by reason of post-occupation legislation the transfer became void; (5) T.T.S. was, therefore, entitled to recover his purchase money which, following the decision in the first action, was an occupation debt and which, when revalued, amounted to less than $100 and, therefore, nothing was recoverable; (6) section 16 D of Titles to Land (Occupation Period) Ordinance 1949 brought into force by amending Ordinance No. 7 of 1951 enables the Court to award compensation to persons whose title, perfected by registration during occupation period, is defeated by the exercise of powers of cancellation conferred by section 15 and whose right to compensation would otherwise have been extremely doubtful; (7) the claim for compensation under section 16 D is on the same basis as if there had been frustration of the contract which led up to the registration and this section in no way restricts the operation of the Debtor and Creditor (Occupation Period) Ordinance 1948.

[Editorial Note:— The following two judgments are reported together to avoid unnecessary duplication and repetition and in our opinion one judgment has to be read in the light of the other.]

Cases referred to :—

(1) *Diana Ellis v. Khoo Ek Neo & Anor.* (1950) M.L.J. 168.

(2) *Palaniappa Chettiar v. Letchumanan Chettiar* (1950) M.L.J. 274.

(3) *Fibrosa Solka Akeyjna v. Fairbairn Lawson Combe Barbour, Ltd.* (1943) A.C. 32.

(4) *Moses v. Macferlan* (1760) 2 Burr. 1005, p. 1012.

(5) *Sinclair v. Brougham* (1914) A.C. 398.

ACTIONS.

M. S. Mahendran for the plaintiff in C.S. No. 386 of 1950.

J. S. Chabra for the defendant in C.S. No. 386 of 1950, and plaintiff in C.S. No. 501 of 1951.

B. K. Das (on behalf of *H. T. Ong*) for the 1st defendant in C.S. No. 501 of 1951.

S. K. Das (*P. P. Dharmananda* with him) for 2nd defendant in C.S. No. 501 of 1951.

Cur. Adv. Vult.

The Judgment in Suit No. 386 of 1950 was as follows :—

Thomson, J. : —This action arises from certain transactions during the Japanese occupation in respect of a piece of land comprised in Certificate of Title No. 188, Lot 100, in the Township of Taiping, the registered proprietor of which is, and at all material times has been, Cheang Kok Yau, who is not a party to the present proceedings.

In order to appreciate the actual facts of the case it is necessary to view them in the light of certain circumstances connected with the Japanese occupation of this country. In the early stages of the occupation steps were taken to make a compulsory levy of $50,000,000 on the Chinese population for the benefit of the occupying power. This was described as a "Gift" to the Imperial Nipponese Government and enforcement of it in Perak was entrusted to a body known as the Perak Overseas Chinese Association the Chairman of which was Mr. K. C. Chan, a well-known local solicitor. By an order made by the Japanese Governor of Perak, which probably had the force of law during the occupation, the Chairman was given power to assess the amount which any person was liable to contribute towards the "Gift" and to facilitate the raising of such payments extensive powers were given to agents to sell their principals' land and the provisions of the Land Code regarding registration of Memorandums of Transfer were substantially modified. In connection with these edifying arrangements the present defendant purported to purchase the land comprised in Certificate of Title No. 188 for $2,400. The money was paid and on 7th June, 1942, a Memorandum of Transfer was executed in favour of the defendant by one Chan Khai Chong as attorney for the registered proprietor. This Memorandum of Transfer was properly attested. In accordance with the Japanese Governor's order in that behalf it was certified by Mr. Chan to be in connection with the "Gift", and it was presented at the Registry of Titles for registration on 23rd March, 1943. As will be seen later, however, it was never in fact registered. The defendant entered into possession of the land.

In June, 1943, the defendant agreed to sell the land to the present plaintiff for the sum of $9,650. The circumstances and the nature of that agreement are in controversy and will require to be discussed at a later stage. The purchase money was paid, however, and on 5th June, 1943, the defendant describing himself as registered proprietor of the land executed a Memorandum of Transfer in favour of the plaintiff. This Memorandum of Transfer was properly attested and was presented for registration on 2nd August, 1943. The plaintiff went into possession of the land and for some years he collected the rent. He did so until October, 1949, when he went out of possession as

a result of a letter addressed to him by a firm of Penang solicitors acting on behalf of the registered proprietor which informed him that the original transfer to the defendant was void because the attorney of the registered proprietor had no power to execute it.

On 1st March, 1950, the Registrar of Land Titles rejected both the transfer from the registered proprietor to the defendant and the transfer from the defendant to the plaintiff on the ground of defects in the agency of the person who had executed the original transfer to the defendant, and after some preliminary correspondence between the solicitors for the parties the plaintiff on 25th October, 1950, instituted the present proceedings which are in effect for the recovery of the purchase money paid to the defendant.

I am only concerned here with the question of whether the plaintiff has any remedy against the defendant and, if so, what that remedy is. I am not concerned with whether the Registrar of Land Titles was justified in refusing to register the transfers which were presented to him, nor am I concerned with the defendant's rights as against the purported agent of the registered proprietor or with the registered proprietor's rights as against the plaintiff. The parties are apparently content to treat these matters as sleeping dogs and it is in no way incumbent on me to disturb their slumbers.

It is not in dispute that the transfer dated 5th June, 1943, from the defendant to the plaintiff was executed in pursuance of an antecedent oral agreement between the parties in accordance with which the plaintiff paid the defendant $9,650. In view of certain conclusions at which I have arrived and which I shall state shortly, I do not find it necessary to consider the question of the validity of that agreement. There is, however, a considerable conflict of testimony as to the making of it. The plaintiffs' story is that he heard the land was for sale, that he inspected it, that he agreed to buy it and that he paid the agreed price for it immediately before the execution of the transfer. The defendant, on the other hand, and in this he is supported by two witnesses who are commonly thought to be necessary in such cases, said that he advised the the plaintiff to make inquiries regarding the title and that the plaintiff said he had done so. In this connection his witnesses were positive that the plaintiff left the scene of the negotiations with the avowed intention of visiting the Registry of Land Titles and that shortly afterwards he returned professing his satisfaction. I have no hesitation in accepting the plaintiff's story. In the first place, it was a physical impossibility for him to have visited the Registry of Land Titles in the way he is said to have done for the negotiations took place in Taiping and the Registry had some time previously been removed to Ipoh, a distance of some 50 miles. And, in the second place, had he made such a visit he would have discovered that the defendant was not the registered proprietor of the land. Had the history of the land been explained to him it may well be that he would have gone on with the transaction but even so it seems to me a matter of commonsense to suppose that he would not have parted with the purchase price, which was a substantial one, without requiring a full explanation of the position, and neither the defendant nor his witnesses have suggested that he even made any attempt to discuss it.

On consideration of the circumstances as a whole, I have come to the conclusion, though as regards the defendant with some reluctance, that both parties at the time of the agreement were under the impression that the defendant was in fact the registered proprietor of the land and so that the land was his to sell. In the light of that, the defendant agreed to sell it and the plaintiff agreed to buy it at a price of $9,650 which was in fact paid. In the event, it now transpires that the defendant was not the registered proprietor and it is accepted for the purpose of these proceedings that the land was not his to sell. The plaintiff, therefore, has not got what he agreed to buy and what he paid for. What he agreed to buy was the full right, title and interest of the registered proprietor in the land and the defendant having executed the subsequent Memorandum of Transfer as registered proprietor it does not lie in his mouth to deny it. In the circumstances, I am compelled to hold that the agreement was void and that the plaintiff is entitled to have the purchase money refunded. In that connection, I would point out that that is what the plaintiff has asked for throughout. In the original letter of demand addressed to the defendant by Mr. K. C. Chan, who was then the plaintiff's solicitor, the defendant was requested to "repay" what was thought to be the post-war equivalent in Malayan currency of the purchase price and in paragraph 5 of the plaint it is stated :—

> "The contract between the plaintiff and the defendant in respect of the purported sale of the said land has become void and the defendant is liable to make compensation to the plaintiff for the amount received by the defendant under the said contract from the plaintiff."

It is true that at the very end of the trial Mr. Mahendran who was appearing for the plaintiff stated that he had abandoned the position that the contract was void. It is clear, however, that he only did so because he realised at a late stage of the trial that he was in serious difficulties over the provisions of the Debtor and Creditor Ordinance, 1948, and the mere fact that for reasons of tactics he has abandoned the position which he pleaded and which is established by the

evidence in no way affects the validity of that position. The truth of the matter is that by reason of the essential mistake of fact which was common to both parties there never was a contract. To follow the terminology of the local Contract Ordinance, there was only an agreement which was void and which never became a contract. There can be no question of breach of contract and no question of damages for breach. The plaintiff's remedy for which he has asked and to which, subject to what I am about to say, he is entitled, is the recovery of the money had and received to his use by the defendant. That statement too disposes of the argument of the defendant that, although he has not so pleaded, he should be allowed to set off against whatever may be due to the plaintiff the profits which the plaintiff received from the land during his occupation of it. Whether the plaintiff is indeed entitled to retain these profits as against the registered proprietor is a matter which will have to be decided in proceedings other than the present, but he certainly cannot be said to have received the benefit of them from the defendant and I fail to see that the defendant is entitled to any allowance in respect of them.

Having arrived at these results I proceed to consider the question of how far if at all, they are affected by the provisions of the Debtor and Creditor (Occupation Period) Ordinance, 1948, for in the absence of any evidence on the point, it is to be presumed by virtue of section 9 of that Ordinance, as is indeed very reasonable to suppose, that the payment of $9,650 made by the plaintiff to the defendant on 5th June, 1943, was in Japanese occupation currency.

Section 6 of the Ordinance so far as it is relevant to the present case provides that where an "occupation debt" was unpaid as at 1st October, 1949, it is to be revalued in accordance with the scale set out in the Schedule to the Ordinance as at the date when payment was first demanded by the creditor or as at 12th August, 1945, whichever of these dates is the earlier. The section goes on to provide that where the amount of such debt as revalued does not amount to $100 Malayan currency, nothing shall be payable in respect of it. By section 2 a "debt" is defined as "a sum certain in money payable by virtue of a legal obligation and recoverable when due by process of law" and an "occupation debt" is defined as a debt "payable by virtue of an obligation incurred during the occupation period and accruing due at any time".

For the plaintiff it was argued that the debt due to him was not an "occupation debt" within the meaning of the Ordinance and that he was therefore entitled to receive the equivalent in Malayan currency of $9,650 occupation currency as at the date on which the money was originally paid by him, that is as on 5th June, 1943. In support of this argument reference was made to the cases of *Diana Ellis v. Khoo Ek Neo & Anor.*[1] and *SP. PL. Palaniappa Chettiar v. V.R.M.V. Letchumanan Chettiar*[2] both of which were cases where the plaintiff recovered damages for breaches of contracts occurring during the occupation period. The first of these cases is of little assistance for all that was granted to the plaintiff was a declaration that she was entitled to damages and no indication was given as to the principles on which these damages were to be assessed, but in the second case, Jobling, J., assessed the damages on evidence that was before him as to the value of the property in question in the case during the occupation period and at the time of the bringing of the action.

In the present case, however, there is no question of damages. What the plaintiff is entitled to recover is the money which the defendant has had and received from him for his use. That being so, it is important to examine the nature of the debt or obligation or whatever it be called that has been thus incurred.

Such an obligation which is of the sort commonly described as quasi-contractual arises by operation of law and is entirely independent of any agreement between the parties. That is a distinction which has its roots deep in the history of our law and it would be inappropriate to set out the body of learning regarding its evolution which is to be found within the covers of any reputable textbook. I would, however, quote a certain passage from the speech of Lord Wright in the great *Fibrosa*[3] case. That, of course, was a frustration case but as was observed by Lord Atkin (at page 50):—

"The principle of law is the same whether the performance of the contract becomes impossible by the cessation of the existence of a thing which is the subject of the contract (an obligation de certo corpore) or by the cessation or non-existence of an express condition or state of things going to the root of the contract and essential to its performance."

The passage from the speech of Lord Wright is as follows (p. 62):—

"By 1760 actions for money had and received had increased in number and variety. Lord Mansfield, C.J., in a familiar passage in **Moses v. Macferlan**[4], sought to rationalise the action for money had and received, and illustrated it by some typical instances. 'It lies,' he said for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition (express, or implied;) or extortion; or oppression; or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances. In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.' Lord Mansfield prefaced this pronouncement by observations which are to be noted. 'If the defendant be under an obligation from the ties of natural justice, to refund; the law implies a

debt and gives this action (sc. **indebitatus assumpsit**) founded in the equity of the plaintiff's case, as it were, upon a contract ('**quasi ex contractu**' as the Roman law expresses it).' Lord Mansfield does not say that the law implies a promise. The law implies a debt or obligation which is a different thing. In fact, he denies that there is a contract; the obligation is as efficacious as if it were upon a contract. The obligation is a creation of the law, just as much as an obligation in tort. The obligation belongs to a third class, distinct from either contract or tort though it resembles contract rather than tort. This statement of Lord Mansfield has been the basis of the modern law of quasi-contract, notwithstanding the criticisms which have been launched against it. .....The standard of what is against the conscience in this context has become more or less canalized or defined, but in substance the juristic concept remains as Lord Mansfield left it.

"The gist of the action is a debt or obligation implied, or, more accurately, imposed, by law in much the same way as the law enforces as a debt the obligation to pay a statutory or customary impost."

Considered in the light of the law as thus stated, the application of the Debtor and Creditor Ordinance to the present case is abundantly clear. What we have here is a debt or obligation. Morever, whenever it became due in point of time, it was payable by virtue of an obligation which the law imputed to the defendant when he received the money. As was said by Lord Sumner in the case of *Sinclair v. Brougham*[5] (at p. 452) when referring to actions in respect of such an obligation :—

"All now rest, and long have rested, upon a notional or imputed promise to repay."

In short the money which the plaintiff is here entitled to recover is payable by virtue of an obligation incurred on 5th June, 1943, during the occupation period and by virtue of the definitions of 'debt' and 'occupation debt' in the Ordinance the date when it actually became due is irrelevant. That being so, it is an occupation debt within the meaning of the Ordinance and section 6 applies accordingly. Payment was not demanded until after 12th August, 1945, and so by reason of section 6 the debt falls to be revalued as at that date in accordance with the scale set out in the Schedule. By that scale, however, the value of $100 Malayan currency on 12th August, 1945, was $95,000 occupation currency and the value of $9,650 occupation currency was thus a little over $10 Malayan currency. That does not amount to $100 Malayan currency and nothing therefore is payable in respect of the debt.

The action is dismissed with costs.

The Judgment in Suit No. 501 of 1951 was as follows :—

Thomson, J. : —This action arises from certain transactions during the Japanese occupation in respect of the Land comprised in Certificate of Title No. 188 Lot 100, in the Township of Taiping, to which I shall henceforth refer as 'the land'. Certain aspects of these transactions have previously attracted the attention of Court in the case of *Mohamed Abdullah v. Teoh Teng Swee* (Civil Suit No. 386/50) and although the present defendants were not parties to that suit, what I have to say of the present suit is to be read in the light of my Judgment in it.

The 1st defendant, who was at all material times the registered proprietor of the land although he has now sold it, resides, and at all material times has resided, in Hongkong. The 2nd defendant at all material times was his agent in Malaya by virtue of a power of attorney which gave extensive powers of management in relation to the 1st defendant's landed property here but which, it is conceded, gave no power to alienate land.

As is well known, in the early stages of the Japanese occupation of this country steps were taken to levy a very large contribution which was called a 'Gift' from the Chinese population for the benefit of the occupying power. It is unnecessary to discuss the levying of this contribution in detail but it is to be observed that in practice the administration of the levy was in the hands of a body known as the Overseas Chinese Association behind which of course stood the power, no doubt at times oppressively exercised, of the Japanese authorities.

Considerable pressure was put on the 2nd defendant who at the time was residing in Ipoh to make a payment to the 'Gift' in respect of his principal's property. This he could only do by selling some of his principal's land which, as he well knew, he had no power to sell. He was, however, given to understand that legislation was contemplated which would give him the necessary power, or rather which would validate any sales he made which wanting such validation would otherwise be defective, and accordingly he proceeded to negotiate the sale of certain pieces of land. At this stage I would observe in fairness to him that I do not think his actions in this connection are open to any criticism. Strictly speaking, they may have been unlawful but in view of the evidence to which I have listened in this and in other cases as to the conditions prevailing at the time, it would have required more than human courage for anyone in his position to have acted otherwise than as he did act.

To proceed, among other pieces of land the 2nd defendant wished to sell the land involved in the present proceedings and in this connection he was brought into contact with the present plaintiff by a broker named Teoh who is now dead and whose evidence is therefore not available. In the event it was agreed that the 2nd defendant would sell and the plaintiff would purchase the land, on which there was a substantial shop house, at a price of $2,400. In pursuance of this agreement

the parties proceeded on 7th June, 1942, to the premises of the Overseas Chinese Association where a transfer of the land was drawn up in proper form and executed by the 2nd defendant (who signed as attorney for the 1st defendant) and by the plaintiff as transferee in the presence of a local Chinese solicitor of considerable experience, Mr. Yeoh Cheang Lee. The purchase price which was in pre-occupation currency was sent to the bank and paid to the account of the 'Gift' and in due course a receipt was issued for it in favour of 1st defendant. The transfer and the document of title were left with the Overseas Chinese Association for the necessary steps to be taken to make good the 2nd defendant's lack of power to sell when the necessary legislation should be enacted. Some months later, apparently in March, 1943, the transfer was sent to the Registrar of Land Titles for registration and on 1st March, 1950, the Registrar rejected it on the ground that the 2nd defendant had no power to execute it.

In the meantime, on 5th June, 1943, the plaintiff in consideration of a sum of $9,650, which was in fact paid to him, executed a transfer of the land, of which he described himself as registered proprietor, to one Mohamed Abdullah. This transfer was also presented in due course (on 2nd August, 1943) for registration and was also rejected on 1st March, 1950, by the Registrar of Land Titles on the ground that the plaintiff was not the registered proprietor. On 25th October, 1950, Mohamed Abdullah commenced the proceedings to which I have already referred (Civil Suit 386/50) against the present plaintiff. In these proceedings I held for reasons which I stated at length in my Judgment that Mohamed Abdullah and the present plaintiff had entered into their agreement for sale of the land under a mistake as to a matter of fact, that is that both believed the present plaintiff to be the registered proprietor, that the agreement was accordingly void by reason of section 20 of the Contract Ordinance, that Mohamed Abdullah was entitled to a refund of the purchase money as money had and received to his use by the present plaintiff but that by reason of the provisions of the Debtor and Creditor Ordinance the amount in question was subject to revaluation and as when revalued it amounted to less than $100 Mohamed Abdullah was not entitled to recover anything. The action was accordingly dismissed with costs.

To return to the events of 7th June, 1942, there was some controversy between the plaintiff and the 2nd defendant as to what was said and done immediately prior to the execution of the transfer. I do not find it necessary to discuss the evidence in detail. On it, I am satisfied that the plaintiff knew that the 2nd defendant was only an agent of the registered proprietor of the land and that on that day he had no authority to execute a transfer.. In any event, if he did not know of his lack of authority he should have known of it for on his own admission he did not ask to see the instrument of agency. The truth, I am satisfied, is that both parties believed that the position would shortly be regularised by legislation and that it was in this belief (which I should point out was not a belief as to a matter of existing fact) that the plaintiff went through with the transaction. It was a well-founded belief for on 27th July, 1942, that is some seven weeks later, an order was made by the Japanese Governor (Special Order No. 1) the effect of which was to authorise the registration of transfers made by attorneys whose powers did not authorise them to make them. It is impossible to say why the transfer in this case and the transfer in *Mohamed Abdullah's case* were not in fact registered when they were presented and I am not here concerned with the validity of the Japanese Governor's Order. I have no doubt, however, that the Japanese Courts would have accepted the validity of that Order, and that being so, from the time of presentation until the end of the Japanese occupation there was no legal reason why the transfers should not have been registered.

What then was the position as between the plaintiff and the 2nd defendant at the time of the making of the transfer? There may have been a warranty of the 1st defendant's title but, if so, it is entirely beside the point because the 1st defendant was in fact the registered proprietor of the land. Normally there is to be implied in such a transaction an undertaking that the transfer is a valid and registrable one but in view of the fact that both parties were, as I have held, fully aware of the 2nd defendant's lack of authority, all that is to be implied here is an undertaking by the 2nd defendant to do everything in his power to effect a valid transfer to the plaintiff. The 2nd defendant did in fact carry out this undertaking. He executed a transfer which although it was not valid when executed became valid by operation of law some seven weeks later and this transfer was without undue delay presented for registration. There was great delay in the Registry of Land Titles for which neither of the parties was responsible and ultimately registration became impossible by reason of the fortunes of war which swept away the Japanese Government of Perak and in effect swept away with it the Japanese Governor's Order of 27th July, 1942. A clearer case of frustration it is difficult to imagine and it follows that what the plaintiff as against the 2nd defendant at any rate is entitled to is not damages for any breach of contract but to recover his purchase money.

That obligation of the 2nd defendant to refund the purchase money is of the sort commonly described as quasi-contractual and for reasons which I set out at length in *Mohamed Abdullah's case* the amount in question is by reason of the Debtor and Creditor Ordinance, 1948, subject to revaluation as provided by that Ordinance. There having been no demand for repayment prior to 12th August, 1945, revaluation must take place as at that date with the result that the revalued amount does not amount to $100 and therefore nothing is recoverable.

With regard to the application of the Debtor and Creditor Ordinance to the compensation that would otherwise have been payable to the plaintiff, Mr. Chabra put forward an argument which has at least the merit of novelty. He argued that by reason of section 16D of the Titles to Land (Occupation Period) Ordinance, 1949, as amended by Ordinance No. 7/51, the Court had a discretion to refrain from applying the provisions of the Debtor and Creditor Ordinance to the compensation which apart from the provisions of that Ordinance would be payable in cases such as this. I have considered this argument with some care, and indeed it was to consider it that I reserved my judgment, but I am compelled by reasons which I shall proceed to state to the conclusion that it is without substance.

Section 15 of the 1949 Ordinance, as amended in 1951, deals with cases where during the occupation there was a dealing in land by a person other than the person entitled by pre-occupation law to effect such dealing, and provides in brief that the Registrar of Land Titles shall cancel the registration of any instrument relating to land executed by such a person, and any subsequent instruments dealing with any estate or interest relating to the same land which purport to have been created by, or derived under, or through any such original instrument executed by a person not entitled by pre-occupation law to execute it. Section 16D provides that if in any case where the registration of an instrument has been cancelled under section 15, any question shall arise in legal proceedings, whether taken to obtain such compensation or not as to whether any compensation shall be payable thereby, "then the Court may order such compensation to be paid to, and by, such persons as justice may require as if the instrument or instruments, the registration of which has been so cancelled, were void or voidable."

The only purpose of section 16D, it seems to me, is to give compensation to persons affected by the cancellation of registration of instruments under section 15 on the same basis as if there had been frustration of the contract which led up to the registration. Let me make myself clear. Let us assume that A was the pre-war registered proprietor of Whiteacre and B was his attorney under a power which did not give authority to sell. During the occupation B sold the land to C who paid the purchase price. The transfer was not registered and ultimately registration became impossible as in the present case. C is then entitled to the return of the purchase price as money had and received and the consideration that the amount he is thus entitled to receive is subject to revaluation under the Debtor and Creditor Ordinance is purely accidental. It affects the *quantum* and not the existence of his right. If, however, B had executed a transfer to C and that transfer had in fact been registered, then C would have acquired an indefeasible title to the land and B would have been discharged from all liability. If subsequently as a result of the enactment of the Titles to Land (Occupation Period) Ordinance the registration of the transfer to C had been cancelled under section 15, in the absence of any further statutory provision it is, to say the least of it, extremely doubtful whether C would have had any remedy at all against B. In effect he would have had what he paid for and would himself have had to bear the loss of its subsequent destruction by the act of legislature. He would thus have been worse off than he would have been had the transfer never been registered. The effect of section 16D is to put him in the same position as he would have occupied had the transfer not been registered and enable him to recover the purchase money.

Section 16D does nothing to restrict the application of the Debtor and Creditor Ordinance in terms nor to my mind does it do so by any process of reasonable implication. Such could only be held to be its intention on the supposition that the Legislature had intended to put the party who had registered his transfer in a very much better position than the party whose transfer had not been registered instead of placing both on the same basis, and of this I can find no suggestion in the wording of the section itself or elsewhere in the Ordinance. In any event, the section is clearly intended to benefit those whose transfers have been registered and not those whose transfers have not been registered and it is to the latter class that the present plaintiff belongs.

In all the circumstances of the case, the claim against the 2nd defendant must fail, and that being so, it is not necessary for me to consider the case against the 1st defendant who, if he is liable at all, can only be liable as the 2nd defendant's principal.

There will be judgment for both defendants with costs to be taxed.